HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 16828 OF 2003

DATED: 23.1.2006

Between:

M/s Voltas Limited

… Petitioner

and

The Regional Conciliation Officer and

Deputy Commissioner of Labour,

Hyderabad and others.

… Respondents

ORAL ORDER:

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Heard Sri S. Sri Ram, learned counsel for the petitioner and Sri V. Hari Haran, learned counsel for the respondents 2 and 4.

The Management of M/s Voltas Limited has filed the writ petition aggrieved by the order of the 1st respondent bearing reference No.C1/1660/2001 dated 8.8.2001

directing the writ petitioner to issue an appointment letter to the respondents 2 and 4 herein and others and pay them difference of wages. These employees and others had filed an application claiming to have joined the Management of Voltas as Sweepers, Helpers and Attenders; that subsequently their services were transferred to the Voltas Cooperative Canteen Limited, which was registered in 1977; that they have been working continuously in Voltas for between 10 to 20 years without a break in service; and that though the Management had extended all facilities to them on par with regular employees, had failed to issue appointment orders, equal wages and other benefits.

By the order impugned, the authority purportedly acting as a Conciliation Officer and exercising powers under Section 12 of the Industrial Disputes Act, 1947 (for short 'the Act') found that the writ petitioner had employed the respondents 2 and 4 and the other employees directly and without intervention of a contractor and accordingly issued the order impugned.

The grievance of the petitioner is that the direction issued by the 1st respondent is beyond the spectrum of powers of the 1st respondent, under Section 12 of the Act.

On behalf of the petitioner, Sri S. Sri Ram contends that the 1st respondent exercising power, under Section 12 of the Act can only facilitate a settlement and if no settlement is arrived at between the parties, the 1st respondent can only send a report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing a settlement and the reasons for failure for a settlement, to the appropriate Government. No determinative jurisdiction is conferred on the 1st respondent, is the Management's plea.

As is apparent from the impugned order, the 1st respondent appears to have exercised powers as a Conciliation Officer under Section 12 of the Act. If that be so,

the direction issued by the 1st respondent is *ultra vires* the limited authority of the 1st respondent-qua the provisions of Section 12 of the Act.

Sri V. Hari Haran, learned counsel for the respondents 2 and 4 states that the employees had submitted a representation simpliciter to the 1st respondent and the 1st respondent is also the competent authority under the A.P. Shops and Establishments Act, 1988 (for short 'the Act 1988). The 1st respondent acting under the available powers under the Act 1988 was competent to issue the directions contained in the impugned order.

On a true and a fair construction of the impugned order of the 1st respondent dated 8.8.2001, it does not appear that the 1st respondent construed the representations of the employees including the respondents 2 and 4 herein as a complaint under the provisions of Act 1988 nor does the 1st respondent appear to have exercised jurisdiction, expressly or by any necessary implication, under the provisions of Act 1988. The 1st respondent demonstrably acted under Section 12 of the Act. On such construction, the impugned order cannot be sustained as it directs the Management to issue an appointment order to the employees and pay them the difference of wages, an order in excess of the extent of jurisdiction of the 1st respondent under Section 12 of the Act.

On the aforesaid analysis, the 1st respondent's order dated 8.8.2001 is quashed as being in excess of the 1st respondent's jurisdiction under Section 12 (4) of the Act. The respondents 2 and 4 shall however be at liberty to make appropriate applications or a complaint either to the 1st respondent or any other authority, specifying the provision under which they seek exercise of jurisdiction by such authority. On such an application, the appropriate authority to whom the respondents 2 and 4 approach, may pass appropriate orders in accordance with law. The

petitioner also seeks interdiction of the prosecution launched against it in STC No.35 of 2003. As is apparent from the notice dated 22.8.2002, the petitioner was merely called upon to show cause as to why action under Act 1988 be not initiated against the petitioner for non-compliance of the order of the 1st respondent dated 8.8.2001. The petitioner is at liberty to approach the 1st respondent in response to the summons dated 22.8.2002 and put forth its objections.

Now that the order of the 1st respondent dated 8.8.2001 is quashed as per this judgment, the petitioner is at liberty to apprise the authority as to this development also and await appropriate orders and if aggrieved by any such orders, to take appropriate remedies thereafter.

Writ Petition is allowed to the extent above. There shall however be no order as to costs.

GODA RAGHURAM, J

Date: 23.1.2006

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